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8 NOT FOR CITATION

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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12 JEFFREY WAYNE ROAM,) C 03-1168 JF (PR)
13 Petitioner,) ORDER GRANTING
14 vs.) PETITIONER'S MOTION TO
15 DAVID L. RUNNELS, Warden,) STAY PETITION;
16) INSTRUCTIONS TO CLERK
17 Respondent.)
18 _____ (Docket Nos. 33)

19 Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas
20 corpus pursuant to 28 U.S.C. § 2254. On November 15, 2004, the Court ordered
21 Respondent to show cause why the petition should not be granted. On March 25, 2005,
22 Respondent filed an answer on the merits. Petitioner then filed a letter with the Court
23 requesting leave to file a supplemental brief and include four new claims in his pending
24 habeas action. On June 7, 2005, the Court denied the request without prejudice and
25 directed Petitioner to file a motion to stay the instant petition while he exhausts his
26 additional claims in state court, or notify the Court within thirty days that he does not
27 wish to pursue the motion to stay. Petitioner subsequently filed a motion to stay the
28 instant petition while he exhausts his additional claims.

1 Respondent opposes the motion. Petitioner filed a state habeas petition on May 24,
 2 2005, which is now pending in the California Supreme Court. The Court will GRANT
 3 Petitioner's motion to stay the instant petition while he exhausts his additional claims.

4 **DISCUSSION**

5 Petitioner claims that he asked his appellate attorney to raise the issues now
 6 pending before the state court, but that his attorney told him that the issues did not
 7 matter. Respondent contends that even if Petitioner exhausts the new claims, they are
 8 untimely. Respondent relies upon Mayle v. Felix, 125 S. Ct. 2562, 2570 (2005), where
 9 the Supreme Court held that amendments made after AEDPA's one-year statute of
 10 limitations has run relate back to the date of the original pleading if the original and
 11 amended pleadings “ar[i]se out of the conduct, transaction, or occurrence.” Id.
 12 (quoting Fed. R. Civ. P. 15(c)(2)). “An amended habeas petition . . . does not relate
 13 back (and thereby escape AEDPA’s one-year time limit) when it asserts a new ground
 14 for relief supported by facts that differ in both time and type from those the original
 15 pleading set forth.” Id. at 2566 (finding that new coerced confession claim did not relate
 16 back to the original petition that raised only a factually distinct Confrontation Clause
 17 claim). Only if the original and amended petition state claims that are tied to a common
 18 core of operative facts will relation back be in order. Id. at 2574-75.

19 District courts have the authority to issue stays, and AEDPA does not deprive
 20 them of that authority. Rhines v. Webber, 125 S. Ct. 1528, 1535 (2005). However, the
 21 district court’s discretion to grant a stay is circumscribed by AEDPA’s stated purposes
 22 of reducing delay in the execution of criminal sentences and encouraging petitioner’s to
 23 seek relief in the state courts before filing their claims in federal court. Id. Because the
 24 use of a stay and abeyance procedure has the potential to undermine these dual purposes
 25 of AEDPA, its use is appropriate only where the district court has first determined that
 26 there was good cause for the petitioner’s failure to exhaust the claims in state court and
 27 that the claims are potentially meritorious. Id.

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Here, the Court finds that Petitioner has shown good cause for his failure to exhaust the new claims. Two of the claims allege ineffective assistance of appellate counsel, claims which could be raised only by way of a state habeas corpus petition. Liberally construed, petitioner's claims set forth cognizable bases for federal habeas relief. While Respondent maintains that the claims are untimely, this argument does not address the substantive merits of the claims. Additionally, the Court finds that Petitioner has not requested a stay to intentionally delay the instant habeas action. As noted, Petitioner already has a state habeas petition asserting the claims. Accordingly, the Court will stay the instant petition and allow Petitioner to exhaust his additional claims in state court. Thereafter, if Petitioner requests leave to amend the instant petition to include the newly exhausted claims, Respondent may address the timeliness of the claims and the propriety of amending the instant petition.

CONCLUSION

Accordingly, Petitioner's motion to stay the instant petition while he exhausts his additional claims (docket no. 33) is GRANTED as set forth below. This action is hereby STAYED until thirty days after the California Supreme Court's final decision on Petitioner's remaining claims.

Once the California Supreme Court has issued a decision on Petitioner's claims, Petitioner shall promptly notify the Court and serve notice on Respondent. Within thirty days of such decision, if Petitioner has not obtained relief in state court, Petitioner must notify the Court that he wishes to reopen this action and file a motion for leave to amend his petition to add the newly exhausted claims.

The Clerk shall administratively close the file pending the stay of this action. This has no legal effect; it is purely a statistical procedure. When Petitioner informs the Court that exhaustion has been completed the case will be administratively re-opened.

IT IS SO ORDERED.

DATED: 3/28/06


JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

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